IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Crl.Rev.Pet.No. 4201 of 2006(A)

CMP.2634/2006 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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REVN. PETITIONER: COMPLAINANT:

GIRIJAVALLABHAN NAIR,
PADMAVILASOM, CHOOZHATTUKOTTA,
MALAVAM P.O., NEYYATTINKARA.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENT: STATE:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR (SRI.C.K. SURESH)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

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for dismissing the complaint was absence of complainant and counsel on the relevant date and also the conduct of the complainant in not being diligent in prosecuting the case.

3. A reading of section 203 of the Code shows that if a Magistrate examines complainant and other witnesses, if any, and the substance of such examination is recorded in writing, the Magistrate has to consider such statements on oath of the complainant and of the witnesses, and the result of the inquiry or investigation, if any, under section 202 of the Code, before he proceeds to dismiss the complaint under section 203 of the Code. It is only after considering sworn statement and result of inquiry that the Magistrate can form an opinion whether there is any sufficient ground or not for proceeding. In this case, the Magistrate has not considered at least the statement of the complainant which was stated to be made by filing an affidavit.

4. Since an affidavit has been filed insisting for sworn statement, the court ought to have considered the statement and formed an opinion whether based on such material, if any, there was any ground for proceeding any further. Even if the sworn statement or result of investigation under section 202 are not available, the material already available ought to have been considered by the trial court and the reasons should have been recorded why it shall not proceed any further [Vide Fr. Abraham v. Thomas (1989(1) KLT 85].

5. It can also be seen from section 203 of the Code that the Magistrate has to form an opinion that there is no sufficient ground for proceeding, based on the materials stated in section 203. If he dismisses the complaint on such ground, in every such case, he shall briefly record his reasons for doing so. In this case, learned Magistrate has not considered any of the materials which are relevant for consideration under section 203 of the Code. He has also not formed an opinion that there is no sufficient ground for proceeding on the basis of such materials. Therefore the order under challenge is illegal and not consistent with section 203 of the Code.

6. The order under challenge is therefore set aside. The learned Magistrate is directed to take the case on file and dispose of the matter in accordance with law.

This revision petition is allowed.

K. HEMA, JUDGE.

Krs.